IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 51 OF 2006.

Pravin B. Patel & Anr. ... Petitioners.

V/s.

Municipal Corporation of
Greater Mumbai. ... Respondent.

Niranjan Pandit i/b. J.M.Shah & J.S.Shah
for the petitioners.

Mr.A.R.Joshi for the respondent.

CORAM: V.C.DAGA, J.

DATED: 18th January 2006.

P.C.:

. Heard.

2. Rule. By consent of parties rule made returnable forthwith.

3. This petition is directed against the impugned order dated 21st October, 2005 passed by the Assistant Commissioner of Municipal Corporation, Mumbai 'A' Ward rejecting the proposal of the petitioners for regularisation of the mezzanine floor existing in garage. One of the grounds on which the proposal of the petitioners has been rejected is that the mezzanine floor has been construed in the Garage No.12 located on the ground floor of the building.

According to the Assistant Commissioner, the garage is a non-habitable area. According to him, mezzanine floor in the garage cannot be regularised since the policy of regularisation does not contain any provision to regularise the loft or mezzanine floor constructed in a non-habitable areas like; garages, passages, chowks, open set back terraces etc.

4. Having examined the policy o regularisation, I do not find any such prohibition in the policy framed by the Corporation. Noticing absence of any such provision in the policy, learned counsel for the Corporation was called upon to support the order on this count. The learned counsel appearing for the Corporation fairly submits that no such provision is to be found in the policy framed by the Corporation.

5. In the above view of the matter, if one of the grounds on which the impugned order is based is unsustainable, then the impugned order cannot be said to be sustainable in the eye of law as it is difficult to contemplate which ground must have weighed with the authority to outrightly reject the proposal of the petitioners. Even, the other findings recorded in the order are also unsustainable for want of cogent reasons.

6. In the above view of the matter, impugned order is set aside. The proceedings are remitted back to the Municipal Corporation for consideration afresh.

7. It would be in the fitness of things if the matter is heard and considered by the Deputy Municipal Commissioner of the Corporation after affording opportunity of hearing to all the parties.

8. The Deputy Municipal Commissioner is expected to hear and decide the proposal of the petitioners as expeditiously as possible, at any rate, within three months from the date of receipt of copy of this order. All rival contentions are kept open.

9. Petitioner is directed to appear before the Deputy Municipal Commissioner on 25th January, 2006, so as to enable the adjudicating authority to fix the further date of hearing as per his convenience.

10. Writ petition stands disposed of and rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)